IN THE BOMBAY HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.416 OF 2004

Union of India. ...Petitioner

vs.

M/s.Parnera Enterprises. ...Respondent.

Mr.Sureshkumar, for Petitioner.

Mr.Neerav Parmar, Proprietor of Respondent present in person.

CORAM: D.K.DESHMUKH,J.

DATED: 7th March, 2005.

P.C.:-

1. By this petition, the petitioner challenges the Award made by the Arbitrators in so far as the award against Claim no.4 is concerned and the rejection of the

Counterclaim made by the petitioner. So far as the claim no.4 is concerned, by the Award, the Arbitrators have directed refund the amount of security deposit. The learned Counsel for the petitioner submits that the claimant claimed that the security deposit was taken for due performance of the work and as the contract was terminated without completing the work, the security deposits could not have been forfeited. Learned Counsel for the petitioner submits that the forfeiture of the security deposit was because of failure of the contractor to complete the work in the time agreed upon and therefore, the Arbitrator was not justified in directing the refund of the amount. I have gone through the record, I have also gone through the general conditions of the contract as also the special conditions of the contract. According to the Railway, for failure of the contractor to complete the work within the time stipulated, the contract is to be terminated and one of the consequence of termination is forfeiture of security deposit of the defaulter. Perusal of the Award, however, shows that the learned Arbitrator as a fact, has found that whatever delays were there in carrying out the work were attributable to the Railway also and not solely to the contractor and therefore, Railway was not justified in terminating the contract and the necessary corollary

is, because the termination is unjustified, the security deposit could not have been forfeited. Thus, the Award is based on the finding of facts recorded by the Arbitrator and the finding is that the contractor alone cannot be held responsible for the delays. So far as rejection of the counter claim is concerned all the three counterclaims have been rejected by the learned Arbitrators on the ground that though the Railway made the counterclaims, no evidence was led in support of those counterclaims. It is not in dispute before me that no evidence was led by the Railway in support of its counterclaims. In this view of the matter therefore, I do not find any error in the Award made by the learned Arbitrators in this regard. I do not find any substance in the petition. The petition is disposed of.

7.3.2005 ----